

BEFORE THE DEPARTMENT OF CORRECTIONS
AND THE BOARD OF PARDONS AND PAROLE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM)	NOTICE OF REPEAL AND
20.2.208, 20.2.209, 20.2.210,)	AMENDMENT
20.2.211, 20.2.212, and the)	
amendment of ARM 20.25.101,)	
20.25.103, 20.25.201, 20.25.202,)	
20.25.305, 20.25.306, 20.25.307,)	
20.25.401, 20.25.402, 20.25.501,)	
20.25.505, 20.25.506, 20.25.601,)	
20.25.701, 20.25.702, 20.25.704,)	
20.25.801, 20.25.901, 20.25.901A,)	
20.25.902, and 20.25.904 pertaining)	
to the Department of Corrections and)	
the Board of Pardons and Parole)	

TO: All Concerned Persons

1. The Department of Corrections and the Board of Pardons and Parole has repealed and amended the above-stated rules.

2. The Department of Corrections has repealed the following rules:

20.2.208 ON-SITE HEARING FOR PAROLE VIOLATION - NOTICE

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

20.2.209 ON-SITE HEARING FOR PAROLE VIOLATION - NOTICE AND WITNESSES

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

20.2.210 ON-SITE HEARING FOR PAROLE VIOLATION - HEARING

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

20.2.211 ON-SITE HEARING FOR PAROLE VIOLATION – FINDING

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

MAR Notice No. 20-25-50

20.2.212 ON-SITE HEARING FOR FURLOUGH VIOLATION

AUTH: 2-4-201, MCA
IMP: 46-23-1023, MCA

3. The rules pertaining to the Board of Pardons and Parole to be amended provide as follows, new matter underlined, deleted matter interlined:

20.25.101 ORGANIZATION OF THE BOARD (1) The board is a quasi-judicial body and is administratively attached to the Department of Corrections. The board consists of seven members who are appointed by the governor; ~~three members and four auxiliary members~~. The board shall administer executive clemency and parole processes and procedures, and ensure the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based.

(2) through (9) remain the same.

AUTH: 46-23-218, MCA
IMP: 2-15-121, 2-15-124, 2-15-2302, 46-23-104, MCA

20.25.103 DISSEMINATION OF INFORMATION (1) through (11) remain the same.

~~(42)~~(11) An offender may request to view his/her individual parole file by making a request in writing ~~to the board executive director~~. Board staff will provide the offender an opportunity to inspect the file except for information deemed confidential. An offender may not request to view his/her file any more frequently than annually unless extenuating circumstances exist. If the offender making the request has previously reviewed his/her file, only the information added to the file since the previous review will be provided unless the offender presents circumstances that justify a complete review.

AUTH: 46-23-218, MCA
IMP: 2-6-102, 44-5-311, 46-18-243, 46-23-218, MCA

20.25.201 OBJECTIVES (1) The principal objective of the board is to affect the release from confinement of appropriate eligible offenders before the completion of the full term of commitment while still fully protecting society. ~~The board~~ A hearing panel may only grant a release when, in the ~~board panel's~~ opinion, there is a reasonable probability it can release the offender without detriment to the offender or the community. ~~When the board~~ a hearing panel grants a release the offender is subject to the conditions imposed by the ~~board panel~~ and the supervision authorized by governing statutes, rules, and policies of the department. The board will conduct business fairly and consistently and the board's hearing panels will base decisions on public safety concerns, successful offender reentry, and sensible use of state resources.

(2) An offender must serve the statutorily or court-imposed amount of time before the board may consider the offender for release. Release before the offender

serves the entire sentence is a privilege, not a right. ~~The board~~ A hearing panel may only grant a release for the best interest of society and when the ~~board panel~~ believes the offender is able and willing to fulfill the obligations of a law-abiding citizen and not as an award of clemency or a reduction of sentence or pardon.

(3) ~~If the department, after it utilizes its screening process, may transfers an offender from prison to prerelease or a community based treatment program before the offender is eligible for parole. In the case of such transfer, when the offender is becomes eligible for parole, a hearing panel the board, after review of the entire offender file or summary, will conduct an impartial hearing.~~

(4) remains the same.

AUTH: 46-23-218, MCA

IMP: 46-23-218, MCA

20.25.202 DEFINITIONS For the purposes of this chapter, these definitions apply: (1) through (3) remain the same.

(4) "Dead time" means the time an offender is not serving his/her sentence of incarceration ~~either because the offender has absconded or is serving another sentence of incarceration~~ a hearing panel has determined the offender was in violation of the provisions of release.

(5) and (6) remain the same.

(7) "Hearing" means the personal appearance of an offender before ~~the board~~ a hearing panel for release consideration, executive clemency, or revocation.

(8) "Hearing panel" means two or three board members ~~assigned by the chair appointed to hear conduct and decide cases of parole hearings, revocation hearings, rescission hearings, administrative parole reviews, and to make final decisions and recommendations in matters of executive clemency.~~

(9) "Offender" means any person sentenced by a state district court to a term of confinement in a state correctional institution, committed to the director of the Department of Public Health and Human Services, or committed to the department.

(10) "Parole" means the release ~~of an offender into the community by a decision of a hearing panel prior to the completion expiration of the offender's sentence, subject to the orders conditions imposed of the board by the hearing panel and subject to the supervision of the department.~~

(11) "Parolee" means a person whom ~~the board~~ a hearing panel has granted parole, who has signed the rules of parole and been given a parole certificate, and whose parole has not been revoked.

(12) "Parole certificate" means the document signed by the board chairman and executive director authorizing the release from confinement to parole.

(13) and (14) remain the same.

(15) "Rescission" means an action of ~~the board~~ a hearing panel that annuls or voids a prior release decision.

(16) through (20) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-218, MCA

20.25.305 ELIGIBILITY (1) An offender in a state prison, or the state hospital, the Montana Developmental Center, or the Montana Mental Health Nursing Care Center, or an offender whom is sentenced to the state prison or committed to the department and who has been transferred from the prison to a the prison has placed in prerelease center, or a youth who was sentenced to prison pursuant to 41-5-206, MCA, and is confined in a youth correctional facility is eligible for parole unless the offender is under a sentence of death, the sentencing court has made the offender ineligible for parole, or the offender is ineligible for parole by operation of statute. The department shall receive parole eligibility dates for eligible offenders as calculated by the department pursuant to statutory and court-imposed criteria.

(a) through (c) remain the same.

(2) If the offender receives a consecutive sentence after reception at prison, but before ~~the board~~ a hearing panel makes an initial ruling on the offender's parole on the original sentence, parole eligibility is determined on the statutory or court-imposed criteria based on the aggregate sum of the original sentence and the consecutive sentence.

(3) If the offender receives a consecutive sentence after reception at prison and after ~~the board~~ a hearing panel makes an initial ruling on the offender's parole on the original sentence, the offender will not be eligible for parole on the consecutive sentence until the offender discharges the original sentence, unless ~~the board~~ a hearing panel orders otherwise. However, the offender remains eligible for parole consideration in regard to the original sentence. ~~The board~~ A hearing panel may allow commencement of the consecutive term for purposes of calculating parole eligibility. If ~~the board~~ a hearing panel allows commencement of the consecutive term, it only changes the parole eligibility calculation, but does not shorten the consecutive term.

(4) An offender who waives his/her parole hearing will have a mandatory parole hearing within six months unless an extended period is necessary as determined by facility staff and approved by board staff, for a period not to exceed one year ~~or as close to six months as scheduling permits~~. The hearing month will be automatically set and the offender will come before a regularly scheduled hearing panel, unless the offender requests a hearing prior to this date and provides at least 30 days written notice to the board. The board, through its staff, will review all waivers for legitimacy and may accept or reject any waiver. An offender may voluntarily waive two consecutive parole hearings for up to ~~six~~ 12 months each time.

(5) Unless ~~the board~~ a hearing panel otherwise orders, before an offender in a community-based program appears before the board, the offender must have at least 90 days free of severe (Class 100) or major (Class 200) disciplinary violations. An offender in a secure facility must have 120 days free of major disciplinary violations.

(6) Unless ~~the board~~ a hearing panel otherwise orders, an offender incarcerated at a prison must be classified and have been living in an assigned housing unit for a minimum of 60 days before the offender may appear for parole consideration.

AUTH: 46-23-218, MCA

IMP: 46-23-201, 46-23-218, MCA

20.25.306 PAROLE PLAN (1) remains the same.

(2) Each offender who applies for a grant of parole should prepare a comprehensive release plan for the ~~board~~ panel's consideration. The parole plan should include the following:

(a) through (d) remain the same.

(3) Substantial changes in the parole plan that is submitted at the time of the parole hearing must be reviewed and approved by the ~~board~~ hearing panel.

AUTH: 46-23-218, MCA

IMP: 46-23-215, 46-23-216, MCA

20.25.307 MEDICAL PAROLE (1) Except for an offender under sentence of death or of life imprisonment without the possibility of parole, ~~the board~~ a hearing panel may release on medical parole:

(a) remains the same.

(b) an Montana offender ~~whom the prison has placed~~ confined in prerelease or other ~~correctional~~ community corrections program; or

(c) an offender for whom the court has restricted parole for a number of years under 46-18-202(2), MCA, but who has obtained the approval of the sentencing court. If the sentencing court does not respond within 30 days to a written request for medical parole consideration from the department, the offender is considered to be approved by the court for medical parole.

(2) remains the same.

(3) The diagnosis must be reviewed and accepted by the department's medical director or designee before ~~the board~~ a hearing panel may hear the case for medical parole.

(4) In order to grant a medical parole ~~the board~~ a hearing panel must find:

(a) and (b) remain the same.

(5) In considering whether an offender is likely to pose a detriment to the victim or community, ~~the board~~ a hearing panel may consider:

(a) through (g) remain the same.

(6) In determining whether to grant or deny an application for medical parole, ~~the board~~ a hearing panel may consider whether:

(a) through (f) remain the same.

(7) The ~~board~~ hearing panel shall require as a condition of medical parole that the offender agree to placement in a setting chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The ~~board~~ hearing panel may require as a condition of parole that the offender agree to periodic examinations and diagnosis at the offender's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the offender's physical capacity has improved to the extent that the offender is likely to pose a possible detriment to society, ~~the board~~ a hearing panel may revoke the medical parole and return the offender to the custody of the department.

(8) Prior to the medical parole hearing, the board, through its staff, shall gather for ~~the board~~ a hearing panel's deliberations, all pertinent information on the

offender, including but not limited to the nature of the offense, social history, criminal history, institutional performance, and any medical and mental examinations which may have been made while in custody.

(9) Upon receiving notification from the department that a medical parolee is eligible for nonmedical parole, ~~the board~~ a hearing panel may consider the offender for nonmedical parole according to the rules established for nonmedical parole consideration.

(10) remains the same.

(11) If ~~the board~~ a hearing panel denies the application, the department may not accept another application regarding the same offender, unless the offender's medical condition has deteriorated to such a degree that the factors previously considered by the ~~board~~ hearing panel are affected.

(12) and (13) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-210, MCA

20.25.401 HEARING PROCEDURE (1) An eligible offender may apply and come before a ~~board~~ hearing panel or an out of state releasing authority for nonmedical parole consideration within two months of time fixed by law as calculated by the prison records department. During the parole hearing the hearing panel will consider all pertinent information regarding each eligible offender including:

(a) through (c) remain the same.

(d) reports of any physical, or psychological, and mental health evaluations ~~reports~~ done on the offender.

(2) The presiding ~~board~~ hearing panel member shall conduct hearings informally and shall have discretion to allow or not allow any proposed testimony. Board staff shall make a record of all hearings.

(3) Interested persons who wish to appear before the ~~board~~ hearing panel must:

(a) remains the same.

(b) inform the board staff of the reason they wish to appear before the ~~board~~ hearing panel and the relationship of the person to the offender at whose hearing the person intends to appear.

(4) through (5)(b) remain the same.

(c) the victim's opinion regarding whether the ~~board~~ hearing panel should grant the offender parole.

(6) remains the same.

(7) The ~~board~~ hearing panel shall consider the victim's statement along with the other information presented in determining whether to grant parole.

(8) remains the same.

(9) When the ~~board~~ hearing panel denies an offender parole, it must give the offender written notification of the decision and include reason(s) for the decision and when the offender may reapply for parole consideration.

(10) ~~The board~~ A hearing panel will consider an eligible offender for parole release even if the offender does not submit an application for parole. ~~The board~~ A

hearing panel will render a decision based on the written record and on the fact the offender did not apply for parole.

(11) ~~The board~~ A hearing panel may conduct hearings via two-way interactive video teleconferencing and may conduct administrative reviews by means of telephone conference.

(12) and (13) remain the same.

(14) At the conclusion of the hearing, the ~~board~~ hearing panel will either notify the offender of the ~~board~~ panel's decision and the reasons for the decision or the ~~board~~ hearing panel may take the decision under advisement.

AUTH: 46-23-108, 46-23-218, MCA

IMP: 46-23-204, MCA

20.25.402 ADMINISTRATIVE REVIEW, REAPPEARANCE, AND EARLY REVIEW (1) After the initial parole hearing, if the hearing panel does not grant a parole it may set a date on which the offender may reappear for a subsequent parole hearing. If the hearing panel does not set a reappearance date, an administrative review of the offender's case will be conducted at intervals as outlined below:

(a) and (b) remain the same.

(2) Unless the offender presents good cause for earlier administrative review pursuant to ~~(5)(6)~~, the reviews will be conducted according to the following schedule: or as otherwise ordered by the hearing panel, but in any case, not to exceed six years.

(a) and (b) remain the same.

~~(c)(3)~~ If the offender's prison discharge date is ten or more years away, the offender's case will be ~~reviewed~~ scheduled for a hearing before the board no less than every ~~eight~~ six years.

(3) remains the same, but renumbered (4).

(4) remains the same, but renumbered (5).

(5) through (c)(iii) remains the same, but renumbered (6).

~~(5)(6)(iv)~~ the offender has fulfilled other conditions ordered by the ~~board~~ hearing panel or has been unable to fulfill them due to factors outside the offender's control;

(v) the ~~board~~ hearing panel's previous disposition was based on erroneous information or misinformation;

(vi) through (viii) remain the same.

(d) If board staff determines the offender meets one of the above-listed criteria, it will refer the request for early review to the board chair or designee to determine whether to schedule an early review. Board staff may not refer an offender for early administrative review if the offender has been involved in multiple or major misconduct since ~~the board~~ a hearing panel's last hearing or administrative review or ~~the board~~ a hearing panel has specifically prohibited early administrative review.

(e) remains the same.

AUTH: 46-23-218, MCA

IMP: 46-23-218, 46-24-212, MCA

20.25.501 DECISION AND RECONSIDERATION (1) through (2)(c) remain the same.

(d) continue the offender to a subsequent reconsideration hearing at an interval consistent with ARM 20.25.402(2) and (3), but in any case not to exceed eight six years. The hearing panel may order that during which time the offender is not subject to administrative review; except as provided in ARM 20.25.402(6).

(e) remains the same.

(f) pass the offender to discharge if the date of discharge is less than ~~three~~ six years away or if the offender has requested to serve to discharge.

(3) through (5) remain the same.

(6) If a two-member hearing panel is unable to reach a unanimous decision, ~~the board chairman will convene a panel of three members as soon as practical to reconsider the application~~ shall appoint a third member to consider all pertinent information and render a final decision.

(7) and (8) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-107, MCA

20.25.505 CRITERIA FOR RELEASE GRANT DECISIONS ON NONMEDICAL PAROLE (1) A ~~board~~ hearing panel may release an eligible offender on nonmedical parole only when, in its opinion:

(a) through (d) remains the same.

(2) In making its determination regarding release, the ~~board~~ hearing panel may consider each of the following factors:

(a) through (o) remains the same.

(p) any and all other factors which the ~~board~~ hearing panel determines to be relevant.

AUTH: 46-23-218, MCA

IMP: 46-23-218, MCA

20.25.506 FURLOUGH (1) When a ~~board~~ hearing panel has granted an offender a parole, ~~it the panel or the board chair or designee~~ may grant the offender a furlough for the sole purpose of finding employment, making suitable living arrangements, or fulfilling any other ~~board~~ hearing panel condition that is difficult to fulfill while incarcerated.

(2) remains the same.

(3) While on furlough the offender remains in the legal custody of the department and is subject to the department's furlough program rules, standard parole conditions, and any other special conditions recited by the hearing panel. If the offender fails to report as directed or fails to return to custody, the offender may be charged with a violation of 45-7-306, MCA.

(4) The offender may be immediately returned to the institution from which the furlough was granted if the offender violates the furlough program rules, any of

the standard parole rules, any of the ~~board~~ panel's special conditions, or if the offender is unable to fulfill the employment, housing, or other furlough conditions. (5) and (6) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-218, MCA

20.25.601 RESCISSION HEARING (1) A ~~board~~ hearing panel may conduct a hearing and rescind a previously granted parole if the offender has not left confinement or is on furlough status and the panel finds one of the following has occurred:

(a) through (4) remain the same.

(5) Unless a ~~board~~ hearing panel otherwise orders, before an offender leaves prison confinement on parole, the offender must be clear of major disciplinary misconduct for a minimum of 120 days. If the offender is a resident of a community-based program, the offender must be clear of Class 100 and 200 disciplinary violations for at least 90 days.

AUTH: 46-23-218, MCA
IMP: 46-23-218, MCA

20.25.701 RELEASE (1) The board, through its staff, may delay a release that has been granted and not scheduled for rescission, up to 120 days as a result of improper conduct or new evidence or information.

(1) remains the same, but renumbered (3).

(2) remains the same, but renumbered (4).

~~(3)~~(2) Parole is not effective until the conditions are signed by the offender and the board issues the parole certificate. If a violation is established, ~~the board-a hearing panel~~ may continue or revoke rescind the parole, or enter such other order as it may see fit. The determination of further release shall be consistent with the rules adopted for release hearings.

AUTH: 46-23-218, MCA
IMP: 46-23-215, MCA

20.25.702 CONDITIONS OF SUPERVISION (1) When a ~~board~~ hearing panel orders an offender paroled, the offender is subject to the following standard rules unless otherwise ordered by the panel:

(a) through (h) remain the same.

(i) The offender is prohibited from using or possessing alcoholic beverages and ~~illegal drugs~~ all intoxicants or mind altering chemicals. The offender is required to submit to bodily fluid testing for ~~drugs or alcohol~~ intoxicants or mind altering chemicals on a random or routine basis and without reasonable suspicion.

(j) and (k) remain the same.

(2) A parolee shall pay a supervisory fee of at least \$10 a month for each month under supervision. A ~~board~~ hearing panel may reduce or waive the fee or

suspend the monthly payment if payment would cause the parolee significant financial hardship.

(3) A ~~board~~ hearing panel may order additional special conditions. Additionally, a hearing panel shall consider Department of Corrections' requests for special conditions. Any special conditions imposed by the department must be approved by a ~~board~~ hearing panel. Special conditions must not be unrealistic or vague and must be reasonably related to the offender's crime, public safety, or the circumstances and rehabilitation of the offender.

(4) and (5) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-215, MCA

20.25.704 CONDITIONAL DISCHARGE FROM SUPERVISION (1) Upon recommendation of the supervising parole officer, a ~~board~~ hearing panel may conditionally discharge a parolee from parole supervision before the expiration of the sentence, if the panel determines that such conditional discharge is in the best interests of the parolee and society, and will not present an unreasonable risk of danger to society or the victim of the offense. ~~However, the board may revoke a parole, even when the parolee is conditionally discharged from supervision, if the parolee violates any laws or ordinances and/or conditions that the board has imposed upon the parolee's conditional discharge.~~

(2) During a conditional discharge the following apply:

(a) the parolee is not supervised by the department;

(b) the parolee will not pay supervision fees; and

(c) if the parolee becomes a resident of another state, the parolee's sentence is discharged, but the parolee can be revoked as in subsection (7).

~~(2)(3) After the parolee has served one year of active supervision, the parole officer will review the parolee's file and may recommend a parolee for conditional discharge after the parolee has served one year of active supervision. The parole officer will recommend conditional discharge unless a reason exists to continue parole supervision.~~

(3) remains the same, but renumbered (4).

~~(4)(5) If a hearing panel grants a conditional discharge from supervision it must may order the conditions the parolee must meet while on conditional discharge. At a minimum, the panel must order that the parolee to submit written reports to the board once a year, reporting any the parolee's address or employment changes immediately to the parolee's supervising officer, and report any contacts the parolee has had with law enforcement. The parolee also remains subject to search upon a parole officer's reasonable suspicion the parolee has violated parole.~~

~~(5)(6) A ~~board~~ hearing panel may return a parolee to active supervision or amend the conditions of the conditional discharge upon request of the supervising agency, if, in the ~~panel's~~ opinion of a hearing panel, this action is in the best interest of society and the parolee has committed any of the violations listed in (7).~~

(7) The board may revoke a parole, even when the parolee is conditionally discharged from supervision, if the parolee:

(a) is charged with a felony offense;

- (b) is charged with a misdemeanor offense for which the parolee could be sentenced to incarceration for a period of more than six months; or
- (c) the parolee fails to report his/her address and law enforcement contacts.

AUTH: 46-23-218, MCA

IMP: 46-23-215, MCA

20.25.801 ON-SITE HEARING AND REVOCATION OF PAROLE (1) If an officer of the department has reason to believe a parolee has violated any of the conditions of the parolee's release, a probation and parole officer or law enforcement officer, upon the direction of a probation and parole officer, may arrest the parolee. If a parolee is arrested, the department must conduct an on-site hearing unless the parolee waives the right to an on-site hearing or pursuant to (3), no on-site hearing is necessary.

(2) remains the same.

(3) No on-site hearing is necessary if the parolee is convicted of a felony offense during the period of supervision, or if the parolee is arrested in a state in which the parolee had no permission to travel or reside. If no on-site hearing is necessary the ~~board~~ hearing panel may utilize the court judgment and conviction or out-of-state arrest documents in lieu of the on-site hearing summary.

~~(4) Unless the parolee waives the revocation hearing, the board will schedule a revocation hearing within 90 days of receipt of the on-site hearing summary or of receipt of notice of conviction or return to Montana custody. If the parolee waives the revocation hearing the parolee must sign a waiver that clearly specifies the rights the parolee is relinquishing. Once the hearing is scheduled, the parolee may request a continuance and board staff may grant the continuance if the parolee can show good and substantial cause for the continuance.~~

~~(5) At the revocation hearing the parolee may be represented by counsel at the parolee's expense, and may present witness testimony if the testimony relates to the violations. An indigent parolee may request appointed counsel if difficult or complex issues are present and if the parolee is unable to articulate the issues. A decision on the request for appointed counsel will be rendered by a board hearing panel after due consideration of the request.~~

~~(6) A parolee who contests parole revocation or the parolee's counsel shall, at least 20 days before the revocation hearing, present to the board staff:~~

~~(a) any requests for information from the parolee's file that the parolee needs for the hearing;~~

~~(b) a list of witnesses and exhibits the parolee intends to present at the revocation hearing;~~

~~(c) a list of information the parolee will present at the hearing; and~~

~~(d) any requests for subpoenas the parolee wants the board to issue. The board will only issue subpoenas for extraordinary reasons and in cases where the board considers a person's testimony is crucial to a determination of the issue of revocation.~~

~~(7) The presiding hearing panel member will conduct the revocation hearing and will record the hearing. The decision of the board in a revocation hearing is by a preponderance of the evidence. The board may consider:~~

- (a) reports of the supervising officer;
- (b) ~~the report of the on-site hearing, if one was conducted; and~~
- (c) ~~the information and evidence presented at the hearing.~~
- (8) ~~If the board decides the parolee has violated parole, the hearing panel may, considering the nature of the violations and the criteria for release grant decision, take any of the following actions:~~
 - (a) ~~continue the parolee on parole with release to the community;~~
 - (b) ~~continue the parolee on parole, but authorize the parolee's detention in custody until the parolee satisfies conditions imposed by the board;~~
 - (c) ~~revoke the parole and set no re-parole date;~~
 - (d) ~~revoke the parole, but order the offender's re-parole on a date certain;~~
 - (e) ~~revoke the parole and set a date within one year when a board hearing panel will conduct an administrative review of the offender's case; or~~
 - (f) ~~make any other appropriate order.~~
- (4) For an on-site hearing the parole officer shall serve the parolee with a report of violation and notice of on-site hearing.
- (5) The on-site hearing must be held at or reasonably near the site of the alleged violation within a reasonable time after the service of the report of violation to the parolee. If the parolee is arrested out-of-state, the hearing will be conducted by the state tasked with supervision of the parolee or upon return to Montana custody.
- (6) The parolee may have witnesses attend the on-site hearing, but only if the witnesses have relevant testimony to present concerning whether the parolee did or did not violate the conditions of release on parole, and only if the witnesses can qualify to enter the correctional facility if the hearing is held in a secure facility.
- (7) A hearing officer of the department will preside over the on-site hearing. If the hearing officer finds there is probable cause to hold the parolee for the final decision of the board, the parole officer will notify the board and submit a summary of the hearing to the board.
- (8) The parolee may be held in a state prison pending an on-site hearing or after a hearing officer has determined there is probable cause to hold the parolee for a final decision of the board.
- (9) remains the same.
- (10) If a hearing panel determines that the offender has violated the provisions of release, ~~revoked parolee has absconded supervision, a board the~~ hearing panel, at its sole discretion, will determine the amount of time, if any, that will be counted as time served while the parolee was in violation of the provisions of release ~~whether the time from the issuing of the violation warrant to the date of the parolee's arrest within the state or return to Montana custody if the parolee was arrested out of state, or any part of that time, will be counted as time served under the sentence, or whether the time was dead time and did not diminish the time the offender had to serve to discharge the sentence.~~
- (11) A parole violation warrant will remain active until the parolee is in Montana custody and may not be quashed without the approval of a ~~board hearing panel~~. If the parolee's sentence expiration date is reached, ~~a hearing panel the~~ board chair or designee will review the case to determine if keeping the warrant active is in the interests of justice. If the ~~panel~~ board chair or designee decides to

keep the warrant active after the parole discharge date, not including dead time, a ~~panel~~ the board chair or designee will review the parolee's status annually.

AUTH: 46-23-218, MCA

IMP: 46-23-215, MCA

20.25.901 APPLICATIONS FOR CLEMENCY (1) through (2)(iii) remains the same.

(iv) psychological reports ~~as requested by the board~~ that are available at the time of application;

(v) and (vi) remain the same.

(3) ~~Unless the board otherwise orders or there has been a substantial change in circumstances, as determined by the board, a~~ An offender whose application has been denied may not reapply for executive clemency unless the offender submits evidence of substantial change in circumstances since the last application. Board staff will screen reapplications for clemency and if the offender has submitted evidence of substantial change of circumstances, it will forward the reapplication to a hearing panel for the panel to determine if it will order an investigation and hearing as indicated in ARM 20.25.902.

(4) and (5) remain the same.

AUTH: 46-23-218, MCA

IMP: 46-23-301, MCA

20.25.901A EXECUTIVE CLEMENCY CRITERIA (1) Pardon is a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction. An individual may not apply for a pardon unless the offense for which he/she seeks a pardon has been commuted or discharged. A ~~board~~ hearing panel may recommend a pardon for an individual who:

(a) through (2)(d) remain the same.

(3) ~~The board~~ A hearing panel may also recommend to the governor that a respite or a remission of fines or forfeitures be granted.

(4) When considering an application for executive clemency the ~~board~~ hearing panel shall consider the nature of the crime, the comments of the sentencing judge, the prosecuting attorney, the community, and the victims and victims' family regarding clemency for the applicant, and whether release would pose a threat to the public safety.

AUTH: 46-23-218, MCA

IMP: 46-23-301, MCA

20.25.902 INVESTIGATIONS FOR CLEMENCY AND ORDER FOR HEARING (1) In cases in which the death penalty has not been imposed, ~~The board staff will conduct a preliminary review of the application for clemency and submit a report to a board hearing panel for its consideration. In cases in which the death penalty has not been imposed~~

(a) The hearing panel, based on the staff's preliminary review, may accept or reject the application. The panel will base its decision to accept or reject an application on:

~~(a)(i)~~ all the circumstances surrounding the crime for which the applicant was convicted; and

~~(b)(ii)~~ the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

~~(2)(b)~~ If a hearing panel decides Upon a hearing panel decision to accept the application, and in all cases in which the death penalty has been imposed, it will request the department to conduct an investigation within 90 days of its request. The hearing panel may request a psychological evaluation of the applicant as part of the investigation.

~~(3)(i)~~ Within 90 days of receiving the investigation report, board staff will compile all the information for a hearing panel's consideration. In cases in which the death penalty has not been imposed, board staff will and make a recommendation to the panel that the panel either reject the application or order a hearing on the application.

~~(ii)~~ The panel may require other reports that, in the panel's opinion, are necessary.

~~(4)(c)~~ In cases in which the death penalty has not been imposed, aAfter receipt of the investigation report, the board staff's recommendation, and any other reports the panel has required, a hearing panel will consider the application and decide whether to deny the application or hold a hearing concerning the application.

~~(5)(d)~~ If in the opinion of the hearing panel sufficient cause appears to conduct a hearing on the application, and in all cases in which the death penalty has been imposed, the panel will sign an order indicating the following:

~~(i)~~ the date on which the hearing will be held;

~~(ii)~~ that all persons having an interest in the matter who desire to be heard should be present on the date set for the hearing;

~~(iii)~~ that the order must be printed and published in a newspaper of general circulation in the county where the crime was committed once each week for two weeks; and,

~~(iv)~~ that a copy of the order must be sent to the district judge, the county attorney, and the sheriff of the county where the crime was committed, and to the applicant set a date for the hearing and order board staff to give notice of the hearing date as prescribed by law to all concerned including the applicant, law enforcement, the sentencing court, the county attorney in the county in which the crime was committed, and victims of the crime.

~~(6)(e)~~ If the panel denies the application without a hearing, it will give notice to all concerned the applicant and will post the denial on the board's web site within 21 calendar days of the board's decision.

~~(2)~~ If the board receives an application for clemency for an inmate for whom the death penalty has been imposed, the board will set a date for a hearing on the application. Board staff will give notice of the hearing date, as prescribed by law, and as described in (1)(d).

AUTH: 46-23-218, MCA
IMP: 46-23-301, MCA

20.25.904 DECISION CONCERNING CLEMENCY (1) Upon conclusion of the hearing the hearing panel will take the entire case under advisement or may issue an immediate decision. If the panel takes the case under advisement, it must make a decision in writing within 30 days.

(a) In cases in which the death penalty has not been imposed, if the hearing panel makes a recommendation that the governor grant clemency, it will ~~within 30 days of the decision~~ immediately forward all relevant documents and a proposed executive order to the governor for the governor's final determination. If the panel does not recommend a grant of clemency, it will not forward the application to the governor.

(b) In cases in which the death penalty has been imposed, the ~~board hearing panel~~ will, immediately after making its decision, forward all relevant documents and a recommendation to grant or deny clemency to the governor for the governor's final determination.

(2) and (3) remain the same.

AUTH: 46-23-218, MCA
IMP: 46-23-315, MCA

4. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 10:00 a.m. on June 15, 2012, to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-3911; fax (406) 444-4920; or e-mail momholt-mason@mt.gov.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Diana Koch, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-9593; fax (406) 444-4920; or e-mail dkoch@mt.gov, and must be received no later than 5:00 p.m., June 20, 2012.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections